

REFERENCE TITLE: adult protective services; reporting; records

State of Arizona
House of Representatives
Fifty-sixth Legislature
Second Regular Session
2024

HB 2587

Introduced by
Representatives Dunn: Longdon

AN ACT

AMENDING SECTIONS 36-431.01, 46-452 AND 46-454, ARIZONA REVISED STATUTES;
RELATING TO ADULT PROTECTIVE SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 36-431.01, Arizona Revised Statutes, is amended
3 to read:

4 36-431.01. Violations; civil penalties; enforcement

5 A. The director may assess a civil penalty against a person who
6 violates this chapter or a rule adopted pursuant to this chapter in an
7 amount of not ~~to exceed five hundred dollars~~ MORE THAN \$500 for each
8 violation. Each day that a violation occurs constitutes a separate
9 violation.

10 B. The director may issue a notice of assessment that shall include
11 the proposed amount of the assessment. A person may appeal the assessment
12 by requesting a hearing pursuant to title 41, chapter 6, article 10. When
13 an assessment is appealed, the director shall take no further action to
14 enforce and collect the assessment until after the hearing.

15 C. In determining the AMOUNT OF THE civil penalty pursuant to
16 subsection A of this section, the department shall consider the following:

- 17 1. Repeated violations of statutes or rules.
- 18 2. Patterns of noncompliance.
- 19 3. Types of violations.
- 20 4. Severity of violations.
- 21 5. Potential for and occurrences of actual harm.
- 22 6. Threats to health and safety.
- 23 7. Number of persons affected by the violations.
- 24 8. Number of violations.
- 25 9. Size of the facility.
- 26 10. Length of time that the violations have been occurring.

27 11. WHETHER THE HEALTH CARE INSTITUTION AND STAFF ARE IN COMPLIANCE
28 WITH THE REPORTING REQUIREMENTS PURSUANT TO SECTION 46-454.

29 D. Pursuant to interagency agreement specified in section 36-409,
30 the director may assess a civil penalty, including interest, in accordance
31 with 42 United States Code section 1396r. A person may appeal this
32 assessment by requesting a hearing before the director in accordance with
33 subsection B of this section. Civil penalty amounts may be established by
34 rules adopted by the director that conform to guidelines or regulations
35 adopted by the secretary of the United States department of health and
36 human services pursuant to 42 United States Code section 1396r.

37 E. Actions to enforce the collection of penalties assessed pursuant
38 to subsections A and D of this section shall be brought by the attorney
39 general or the county attorney in the name of the state in the justice
40 court or the superior court in the county in which the violation occurred.

41 F. Penalties assessed under subsection D of this section are in
42 addition to and not in limitation of other penalties imposed pursuant to
43 this chapter. All civil penalties and interest assessed pursuant to
44 subsection D of this section shall be deposited, PURSUANT TO SECTIONS
45 35-146 AND 35-147, in the nursing care institution resident protection

1 revolving fund established by section 36-431.02. The director shall use
2 these monies for the purposes prescribed by 42 United States Code section
3 1396r, including payment for the costs of relocation of residents to other
4 facilities, maintenance of operation of a facility pending correction of
5 the deficiencies or closure and reimbursement of residents for personal
6 monies lost.

7 G. The department shall ~~transmit~~ DEPOSIT CIVIL penalties assessed
8 under subsection A of this section ~~to~~ IN the state general fund.

9 Sec. 2. Section 46-452, Arizona Revised Statutes, is amended to
10 read:

11 46-452. Protective services workers; powers and duties;
12 immunity; communications; access to records

13 A. ~~A~~ EACH protective services worker shall:

14 1. Receive reports of abused, exploited or neglected vulnerable
15 adults.

16 2. Receive from any source oral or written information regarding an
17 adult who may be in need of protective services.

18 3. On receipt of such information make an evaluation to determine
19 if the adult is in need of protective services and what services, if any,
20 are needed.

21 4. Offer an adult in need of protective services or ~~his~~ THE ADULT'S
22 guardian whatever services appear appropriate in view of the evaluation.

23 5. File petitions as necessary for the appointment of a guardian or
24 conservator or the appointment of a temporary guardian or temporary
25 conservator or make application for a special visitation warrant as
26 provided for in title 14, chapter 5.

27 6. FILE FOR AN EMERGENCY ORDER OF PROTECTION AS A THIRD PARTY
28 PURSUANT TO SECTION 13-3624 OR AN INJUNCTION AGAINST HARASSMENT PURSUANT
29 TO SECTION 12-1809 TO PREVENT AN ALLEGED PERPETRATOR FROM HAVING ACCESS TO
30 THE VULNERABLE ADULT.

31 B. The department or a protective services worker employed by the
32 department may not be appointed as guardian, conservator or temporary
33 guardian.

34 C. An adult protective services worker is immune from civil
35 liability for applying for a special visitation warrant or for filing a
36 petition for guardianship or conservatorship unless the application or
37 filing is done in bad faith.

38 D. For the purposes of this chapter, communications concerning a
39 person who is incarcerated in any jail, prison, detention center or
40 correctional facility or concerning a patient in the Arizona state
41 hospital are not reports that require evaluation by a protective services
42 worker.

43 E. THE DEPARTMENT OR A PROTECTIVE SERVICES WORKER, IN PERFORMING
44 OFFICIAL DUTIES, MAY ACCESS UNREDACTED LAW ENFORCEMENT RECORDS RELATED TO

1 AN ADULT PROTECTIVE SERVICES CASE. A LAW ENFORCEMENT ENTITY SHALL FURNISH
2 RELEVANT RECORDS TO ADULT PROTECTIVE SERVICES ON REQUEST.

3 Sec. 3. Section 46-454, Arizona Revised Statutes, is amended to
4 read:

5 46-454. Duty to report abuse, neglect and exploitation of
6 vulnerable adults; duty to make medical records
7 available; violation; classification

8 A. A health professional, emergency medical technician, home health
9 provider, hospital intern or resident, speech, physical or occupational
10 therapist, long-term care provider, social worker, peace officer, medical
11 examiner, guardian, conservator, fire protection personnel, developmental
12 disabilities provider, employee of the department of economic security or
13 other person who has responsibility for the care of a vulnerable adult and
14 who has a reasonable basis to believe that abuse, neglect or exploitation
15 of the VULNERABLE adult has occurred shall immediately report or cause
16 reports to be made of such reasonable basis to a peace officer or to the
17 adult protective services central intake unit. The guardian or
18 conservator of a vulnerable adult shall immediately report or cause
19 reports to be made of such reasonable basis to the superior court and the
20 adult protective services central intake unit. ~~All of~~ The ~~above~~ reports
21 REQUIRED BY THIS SUBSECTION shall be made immediately by telephone or
22 online.

23 B. If an individual listed in subsection A of this section is an
24 employee or agent of a health care institution as defined in section
25 36-401 and the health care institution's procedures require that all
26 suspected abuse, neglect and exploitation be reported to adult protective
27 services as required by law, the individual is deemed to have complied
28 with the requirements of subsection A of this section by reporting or
29 causing a report to be made to the health care institution in accordance
30 with the health care institution's procedures.

31 C. An attorney, accountant, trustee, guardian, conservator or other
32 person who has responsibility for preparing the tax records of a
33 vulnerable adult or a person who has responsibility for any other action
34 concerning the use or preservation of the vulnerable adult's property and
35 who, in the course of fulfilling that responsibility, discovers a
36 reasonable basis to believe that abuse, neglect or exploitation of the
37 VULNERABLE adult has occurred shall immediately report or cause reports to
38 be made of such reasonable basis to a peace officer or to the adult
39 protective services central intake unit. ~~All of~~ The ~~above~~ reports
40 REQUIRED BY THIS SUBSECTION shall be made immediately by telephone or
41 online.

42 D. Reports pursuant to subsections A and C of this section shall
43 contain:

44 1. The names and addresses of the VULNERABLE adult and any persons
45 having control or custody of the VULNERABLE adult, if known.

1 2. The **VULNERABLE** adult's age and the nature and extent of the
2 **VULNERABLE** adult's vulnerability.

3 3. The nature and extent of the abuse, neglect or exploitation.

4 4. Any other information that the person reporting believes might
5 be helpful in establishing the cause of the abuse, neglect or
6 exploitation.

7 E. Any person other than one required to report or cause reports to
8 be made ~~in~~ **PURSUANT TO** subsection A or C of this section who has a
9 reasonable basis to believe that abuse, neglect or exploitation of a
10 vulnerable adult has occurred may report the information to a peace
11 officer or to the adult protective services central intake unit.

12 F. A person having custody or control of medical or financial
13 records of a vulnerable adult for whom a report is required or authorized
14 under this section shall make those records, or a copy of those records,
15 available to a peace officer or adult protective services worker
16 investigating the vulnerable adult's abuse, neglect or exploitation on
17 written request for the records signed by the peace officer or adult
18 protective services worker. Records disclosed pursuant to this subsection
19 are confidential and may be used only in a judicial or administrative
20 proceeding or investigation resulting from a report required or authorized
21 under this section.

22 G. If reports pursuant to this section are received by a peace
23 officer, the peace officer shall notify the adult protective services
24 central intake unit as soon as possible and make that information
25 available to them, **INCLUDING ALL RELATED UNREDACTED POLICE RECORDS. A**
26 **PEACE OFFICER SHALL PROVIDE THE INFORMATION TO ADULT PROTECTIVE SERVICES**
27 **AS SOON AS POSSIBLE.**

28 H. A person required to receive reports pursuant to subsection A, C
29 or E of this section may take or cause to be taken photographs of the
30 abused **VULNERABLE** adult and the vicinity involved. Medical examinations,
31 including radiological examinations of the involved **VULNERABLE** adult, may
32 be performed. Accounts, inventories or audits of the exploited **VULNERABLE**
33 adult's property may be performed. The person, department, agency or
34 court that initiates the photographs, examinations, accounts, inventories
35 or audits shall pay the associated costs in accordance with existing
36 statutes and rules. If any person is found to be responsible for the
37 abuse, neglect or exploitation of a vulnerable adult in a criminal or
38 civil action, the court may order the person to make restitution as the
39 court deems appropriate.

40 I. If psychiatric records are requested pursuant to subsection F of
41 this section, the custodian of the records shall notify the attending
42 psychiatrist, who may excise from the records, before they are made
43 available:

44 1. Personal information about individuals other than the patient.

1 2. Information regarding specific diagnosis or treatment of a
2 psychiatric condition, if the attending psychiatrist certifies in writing
3 that release of the information would be detrimental to the patient's
4 health or treatment.

5 J. If any portion of a psychiatric record is excised pursuant to
6 subsection I of this section, a court, on application of a peace officer
7 or adult protective services worker, may order that the entire record or
8 any portion of the record containing information relevant to the reported
9 abuse, neglect or exploitation be made available to the peace officer or
10 adult protective services worker investigating the abuse, neglect or
11 exploitation.

12 K. A licensing agency shall not find that a reported incidence of
13 abuse at a care facility by itself is sufficient grounds to allow the
14 agency to close the facility or to find that all residents are in imminent
15 danger.

16 L. Retaliation against a person who in good faith reports abuse,
17 neglect or exploitation is prohibited. Retaliation against a vulnerable
18 adult who is the subject of a report is prohibited. Any adverse action
19 taken against a person who reports abuse, neglect or exploitation or a
20 vulnerable adult who is the subject of the report within ninety days after
21 the report is filed is presumed to be retaliation.

22 M. A person who violates this section is guilty of a class 1
23 misdemeanor, except THAT if the failure to report involves an offense
24 listed in title 13, chapter 14, the person is guilty of a class 6 felony.